IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 137.

ILLINOIS COMMERCE COMMISSION,
Petitioner,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,
Respondent,
(VERA JOHNSON, CO-APPELLANT BELOW).

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT, ILLINOIS CENTRAL RAILROAD COMPANY, IN OPPOSITION.

OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported in 2 Ill. 2d 382.

JURISDICTION.

The judgment of the Supreme Court of Illinois was entered on March 17, 1954. The jurisdiction of this Court is allegedly invoked under Section 2101 (f) of the Judicial Code as amended.

QUESTIONS PRESENTED.

1. Whether the federal court will review a decision by the court of last resort of a state interpreting the jurisdiction of a state agency.

2. Whether Section 3 (1) of the Interstate Commerce Act precludes the Illinois Commerce Commission from exercising its regulatory power under Section 38 of the Illinois Public Utilities Act[1].

3. Whether interstate travel regulations require national uniformity.

STATUTES INVOLVED.

The applicable portion of Section 3 (1) of the Interstate Commerce Act [49 U. S. C. Section 3 (1)] provides:

> "It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The applicable portion of Section 38 of the Illinois Public Utilities Act (Ill. Rev. Stats., 1953, Chapter 111⅔, Section 38) provides in part as follows:

> "No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any

1. Ill. Rev, Stats., 1953, Chapter 111-2/3, Sec. 38.

prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service. * * *"

STATEMENT.

On July 1, 1950, Vera Johnson, a Negress, purchased a ticket for use on Respondent's train "The City of New Orleans" for passage between Chicago, Illinois, and Canton, Mississippi (R. 7-8). When she went through the gate to board the train she was handed a card designating Car 2 as the car which she should board (R. 8). On that date the first section of that train, which Miss Johnson rode, was for the exclusive use of interstate passengers (R. 20). Because of holiday travel the demands for passenger transportation on this train were unusually heavy. There were 1,050 people on the first section of the train which had a seating capacity of 887. Of the 1,050 passengers 310 were adult Caucasian passengers, 580 adult Negro passengers and the balance were children under the age of 5 years (R. 19-20). There were 15 coaches on the train, 9 of which were filled predominantely with Negro passengers and 6 predominately with Caucasian passengers (R. 20). After Miss Johnson boarded the train she was unable to obtain a seat in Car 2 and subsequently walked six or seven cars to the rear where she found an empty seat in a coach occupied entirely by Caucasians. After she had seated herself a Negro porter told her she could not sit in that car as it was reserved for whites, whereupon he took her luggage and helped her back to Car 2 (R. 9). The Negro porter had no authority to make such a statement and his statement and actions were directly contrary to specific instructions, both oral and written, issued by Respondent's management (R. 23, 37, 47, 51). Miss Johnson made no

complaint of any kind to the conductor in charge of the train although he made frequent trips through the train (R. 35). Miss Johnson testified she did not obtain a seat on the train until about thirty minutes after departure time. The equipment, appurtenances and appearance of all the coaches on the train were the same as were the equipment, appurtenances and appearance of Car 2 in which Miss Johnson rode (R. 9, 21, 29, 86-89).

Based upon this incident Miss Johnson filed a complaint with the Illinois Commerce Commission (hereinafter referred to as State Commission) alleging she was segregated and discriminated against on Respondent's train (R. 2). Other Negro witnesses who testified on behalf of Miss Johnson and who rode the train on July 1, 1950, stated that they walked throughout the train without anyone attempting to stop or interfere with them (R. 12) and that they rode in cars which they alleged were reserved solely for Caucasians (R. 13). They also testified that there were no empty seats in any of the cars (R. 11) and that there were passengers standing throughout the train including what they designated as the "white coaches" (R. 14). Other Negro witnesses testified that they had ridden on "The City of New Orleans" on other dates and had been given car-cards for cars at the head of the train but that upon boarding the train they had walked to the rear and ridden in coaches occupied predominately by Caucasians (R. 61-62, 63-64, 69).

Shortly after "The City of New Orleans" was placed in service Respondent found it necessary, because of the heavy patronage given the train, to place in effect a loading practice so that the train could be safely and expeditiously loaded (R. 17). Experience showed that in the absence of an orderly loading practice the accident ratio increased and the scheduled departure of trains out of the station was delayed (R. 17-18). To effect a loading

practice which would be agreeable to the greatest number of Respondent's passengers consideration was given to these factors:

a. An equitable assignment of space so as to avoid overloading or underloading any particular car, cars or sections of the train (R. 18);

b. Assignment of "long-haul" passengers (passengers going the greatest distance) to cars with leg rests and to cars where other "long-haul" passengers are found so that the passengers will experience a minimum of inconvenience occasioned by loading and unloading (R. 18-19);

c. Convenience of passengers, *i. e.*, the elimination of the necessity for carrying bags through several cars to find a seat (R. 18);

d. Safety factor, *i. e.*, loading of "short-haul" passengers in cars which stop adjacent to the shorter platforms at smaller stations (R. 17-18);

e. The desires of the greatest number of passengers making use of "The City of New Orleans" (R. 17).

Passenger desires or preferences for loading were determined from (1) observation of the tendency of groups (fraternal, civic, racial, etc.) to load together, (2) conversations with passengers, (3) written expressions of passenger preferences, and (4) reports of the train personnel and company officials regarding actual travel conditions while the train is enroute (R. 19, 23, 25).

As a result of its studies and observations Respondent developed the following loading practice for use on "The City of New Orleans": As passengers pass through the gate in the Twelfth Street Station and show their transportation they are handed cards which are printed "Car 2 (or some other designated number), City of New Orleans." The numbers on these car-cards correspond with the numbers shown on the sides of each of the coaches of the train (R. 18). The coaches used on "The City of New

Orleans" consist of 48, 52 and 56-seat capacity cars. Under normal conditions approximately 45 cards are passed out for 48-seat capacity cars, approximately 50 cards for 56-seat capacity cars, approximately 49 cards for 52-seat capacity cars (R. 18). This allows extra space in each car for children under the age of five who are not required to have a ticket. To avoid congestion on the platform, loading is begun from each end of the train, *i. e.*, cards are first passed out directing passengers to the first and last coaches of the train. When the cards for those two cars have been exhausted, cards are then given out for the second car from the head end and the second car from the rear of the train. When the cards for those cars have been exhausted, the procedure is again repeated, moving to the third car from each end of the train, working in toward the center until the train is completely loaded (R. 18, 24).

In following the loading practice consideration is also given as nearly as is possible to the loading of passengers with people of their own race. The reason for this is that experience and observation have shown that the majority of passengers prefer to be loaded with others of their own race (R. 22, 23, 25, 51). As a result, Negro interstate passengers are generally given car-cards for the front of the train and Caucasian interstate passengers are given car-cards for the rear of the train (R. 24, 34, 51). Illinois intrastate passengers, regardless of race, are normally given car-cards for cars located in the center of the train because the downstate station platforms are considerably shorter than "The City of New Orleans" (R. 17). This practice directs Illinois intrastate passengers to cars which will be in position for the passengers to alight directly onto the shorter station platforms, thereby avoiding the danger incident to alighting on the right-of-way and walking over tracks and uneven ground (R. 18).

The car-card system of loading "The City of New Orleans" does not restrict passengers from changing their accommodations or from using other facilities on the train (R. 18). "The City of New Orleans" is not a reserved seat train and no attempt is made to confine passengers to any section of the train. After passengers have boarded the train, they are free to move to any other car or to make use of any facility on the train (R. 19, 21, 33, 35, 42, 46, 51, 52).

Specific instructions are issued by Respondent's management to all train personnel operating on "The City of New Orleans," as well as Respondent's other trains, that all passengers, regardless of race, color or creed, are to have free and equal use of any and all facilities on all trains. These instructions are both oral and written (R. 23, 37, 47, 51). Negro and Caucasian passengers do make free use of all of the facilities on "The City of New Orleans" and change their seats to other cars when they so desire (R. 33, 42, 43, 44, 45, 46, 56).

Respondent's train "The City of New Orleans" operates between Chicago, Illinois, and New Orleans, Louisiana, running into or through the States of Illinois, Kentucky, Tennessee, Mississippi and Louisiana. Each of these states, except Illinois, have statutes which require Respondent to provide separate but equal accommodations for the Negro and Caucasian races (R. 103-104).

The Supreme Court of Illinois found that the determination of whether or not a rule or practice of an interstate carrier is discriminatory or unduly preferential lies exclusively with the Interstate Commerce Commission and that accordingly the State Commission has no jurisdiction to determine whether or not such rule or regulation is discriminatory or preferential (R. 96-104).

ARGUMENT.

Federal Court Should Abstain from Exercising Jurisdiction Over Matters Properly Decided by State Courts.

Petitioner contends that this Court should review the decision of the Supreme Court of Illinois because such decision makes "every Jim Crowe law in the South and every Civil Rights law in the North * * * a dead letter" (Pet. 7). There is no merit to this contention. The decision of the court below merely defines the jurisdiction of the State agency in the light of both Federal and State legislation.

The State Commission derives its power only from the statute and it has only such authority as is expressly conferred upon it. *Marion & Eastern R. Co.* v. *Illinois Central R. Co.*, 245 Ill. App. 83, certiorari denied 276 U. S. 626; *Commerce Com.* v. *E. St. L. & C. Ry. Co.*, 361 Ill. 606, 198 N. E. 716. There is nothing in the Public Utilities Act of the State of Illinois giving the State Commission the power to enforce the Civil Rights Act of that State. The same argument as petitioners advance here was made to the court below and properly rejected by it (R. 100). If the State Commission is authorized to act at all, it is under Section 38 of the State Public Utilities Act as will be more fully pointed out, *infra*, pp. 9-10. The court below held that the State Commission had no jurisdiction under this Section because Congress has acted to provide identical relief under Section 3 (1) of the Interstate Commerce Act, thereby providing for a uniform determination of discriminatory or unduly preferential treatment as applied to interstate carriers.

In other words, we are dealing here with a situation where the Federal court is asked to step in to appraise and shape State policy governing one of its administrative agencies, *i. e.*, the State Commission. The State court of last resort, having defined and limited the jurisdiction of this agency, this Court should refrain from granting certiorari. *Railroad Commission of Texas* v. *Pullman Co.*, 312 U. S. 496, 499-500; *New York Cent. R. Co.* v. *U. S.*, 13 F. 2d 200, 203, reversed on other grounds 272 U. S. 457.

The Federal Government, Having Exercised Its Exclusive Power Over This Phase of Interstate Commerce so Far as to Take Possession of the Field, the States Can No More Supplement Its Requirements Than They Can Annul Them.

Petitioners suggest (Pet. 12-13) that Section 3 (1) of the Interstate Commerce Act [49 U. S. C., Section 3 (1)] does not pre-empt the field of racial segregation. Petitioner has not contended and the court below did not hold that said Section abrogated the State Civil Rights Act. It is contended that the State Commission has no authority to enforce the State Civil Rights Act. This was recognized by the court below in its decision wherein it stated (R. 100):

> "At the outset, it should be observed that this litigation does not involve the validity or invalidity of a State segregation statute as applied to a carrier."

The Civil Rights Act in Illinois is a part of the Penal Code (Ill. Rev. Stats., 1953, Chapter 38, Section 125). Jurisdiction for enforcement of the Criminal Code is placed solely in the courts and the provisions for enforcement are clearly defined (Ill. Rev. Stats., 1953, Chapter 38, Section 126).

Accordingly the State Commission, if it were to proceed at all, had to proceed under Section 38 of the Public Utilities Act[2] and determine if there was discriminatory or unduly preferential treatment in connection with the interstate trip taken by Miss Johnson. It was this Section that the court below found invaded a field over which Congress had exercised its exclusive power. That this is so, is clearly shown by a comparison of the Federal and State legislation. Section 38 of the Illinois Public Utilities Act, which was adopted subsequent to and patterned after Section 3(1) of the Interstate Commerce Act, is written in practically the same language. In view of the striking similarity between the Federal and State statutes, the State statute must defer to the standards and provisions for enforcement of the Federal act no matter how commendable or consistent in purpose with the Federal statute the State regulation may be. *Napier* v. *A. C. L. R. R.*, 272 U. S. 605; *Erie R. R.* v. *N. Y.*, 233 U. S. 671; *Penna. R. R. Co.* v. *Pub. Service Comm.*, 250 U. S. 566; *Texas & Pacific Railway Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Robinson* v. *Baltimore & Ohio Railway Co.*, 222 U. S. 506; *Mitchell Coal Co.* v. *Pennsylvania Railway Co.*, 230 U. S. 247; *Morris Dale Coal Co.* v. *Pennsylvania Railway Co.*, 230 U. S. 304; *General American Tank Car Corp.* v. *El Dorado Terminal Co.*, 308 U. S. 422. In this connection, the language of Mr. Justice Holmes in *Penna. R. R. Co.* v. *Pub. Service Comm.*, 250 U. S. 566, 569, is particularly pertinent:

> "* * * When the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the states can no more supplement its requirements than they can annul them."

There is no conflict of decision on this point. Every case which Respondent has found holds to this established prin-

2. Ill. Rev. Stats., 1953, Chapter 111-2/3, Sec. 38.

ciple of law. The *Robinson, Mitchell Coal Co.* and *General American Tank Car Corp.* cases, *supra*, deal specifically with Section 3 (1) of the Interstate Commerce Act and although they consider discrimination and undue preference as applied to shippers, it is settled that a passenger is in the same position as a shipper with respect to this Section and is bound by the same rule. *Mitchell* v. *United States*, 315 U. S. 80, 98.

Petitioners rely primarily on the case of *Bob-Lo Excursion Co.* v. *Michigan*, 333 U. S. 28. That case is readily distinguishable from the case at bar in the following important respects:

a. In the *Bob-Lo* case the State proceeded to enforce its Civil Rights Act in the manner provided for by statute and not by an abortive attempt to proceed through a state agency having no jurisdiction, as was done in the instant case.

b. In the *Bob-Lo* case the passenger was *refused* transportation solely because of her race. This vital element is not present in the instant case.

c. In the *Bob-Lo* case there was no danger of burden and confusion from diverse state laws if Michigan's regulation was sustained. In the instant case the court below recognized the very real and imminent danger of burden and confusion from diverse state laws if the Illinois regulation was sustained, stating (R. 103-104):

"If the State of Illinois could prescribe what rule or practice should or should not be followed by an interstate carrier in loading interstate passengers on interstate trains, then so, too, could the States of Kentucky, Tennessee, Mississippi and Louisiana through which the Illinois Central operates its train 'The City of New Orleans.' Under the laws of each of those other States, the Illinois Central is required to provide separate but equal accommodations for the Negro and Caucasian races. The chaotic conditions that would result from divergent loading practices prescribed by various States clearly indicates that the interstate

> and intrastate characteristics of loading are so interrelated that the paramount Federal power must be exerted to the exclusion of the State powers in order to achieve a single, uniform rule for the promotion and protection of national travel."

This language follows the rule ennunciated by this Court in *Houston & Texas Ry.* v. *United States,* 234 U. S. 342.

Interstate Travel Regulations Require National Uniformity.

Petitioner contends that a state may take such action as it desires with respect to civil rights legislation and regulations inasmuch as Congress has not acted in this field (Pet. 14-15). In other words Petitioner suggests Miss Johnson was not complaining about discrimination or undue preference but was merely complaining about segregation *per se.* If this is true, it is clear that the State Commission had no jurisdiction to proceed for it has no authority under the Public Utilities Act of the State of Illinois to determine matters of segregation (R. 100).

Moreover, Petitioner's contention is made in the teeth of frequent pronouncements by this and other Federal courts that in the absence of a Federal act dealing with the separation of races in interstate transportation a single uniform rule is required to promote and protect national travel. *Morgan* v. *Virginia,* 328 U. S. 373; *Chiles* v. *Chesapeake & Ohio Railway Co.,* 218 U. S. 71; *Simmons* v. *Atlantic Greyhound Corp.,* 75 F. Supp. 166.

The *Morgan* case is strikingly similar to the case at bar. In that case the State of Virginia required all passenger motor vehicle carriers, both interstate and intrastate, to separate without discrimination the white and colored passengers in their motor buses so that contiguous seats would not be occupied by persons of different

races at the same time. Morgan, a Negress and an interstate passenger on a bus in that State, refused to comply with a request of the driver to move to a back seat partly occupied by other colored passengers so as to permit the seat she vacated to be used by white passengers. As a result of this refusal she was tried and convicted of a violation of the Virginia Code. The Court of Appeals of Virginia affirmed the conviction. In reversing the conviction, this Court, speaking through Justice Reed, said at page 386:

> "As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule, to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid."

In a special concurring decision Justice Frankfurter said at pages 388-389:

> "The imposition upon national systems of transportation of a crazy-quilt of State laws would operate to burden commerce unreasonably, whether such contradictory and confusing State laws concern racial comingling or racial segregation. * * * The States cannot impose diversity of treatment when such diverse treatment would result in unreasonable burdens on commerce."

In the instant case the same situation prevails. The States of Kentucky, Tennessee, Mississippi and Louisiana require a separation of the races. The State of Illinois prohibits it. Respondent's interstate train "The City of New Orleans" operates through all five of these states.

The chaotic condition that would result from these divergent state requirements if applied to Respondent's interstate train clearly indicates that the interstate and intrastate characteristics of the operation of Respondent's train "The City of New Orleans" are so interrelated that the paramount Federal power must be exerted.

Respondent's Loading Practice Does Not Constitute or Result in Segregation or Discrimination.

The court below did not pass on the question of whether or not the acts complained of constituted segregation as it found the State Commission had no jurisdiction and accordingly the proceedings before it were void. The facts in the case, however, show without question that Respondent's loading practice does not constitute or result in segregation or discrimination. This is perhaps most convincingly shown by the testimony of Miss Johnson's own witnesses. Gertrude Estelle, a Negress and witness for Miss Johnson, testified that she was not compelled to stay in any particular section of the train but, on the contrary, was free to and did move throughout the train, making such use of other facilities as she desired (R. 11, 12). K. S. Range, a Negro and also a witness for Miss Johnson, testified that he did not go to the car suggested by the car-card given him, but instead went directly to one of the cars at the rear of the train, boarded it and remained there throughout his journey with the exception of visits to other parts of the train and to other facilities on the train (R. 13-15). J. L. Horace, a Negro and likewise a witness for Miss Johnson, stated that he left the cars to which he had been directed for loading on each of the trips he made on "The City of New Orleans" and obtained seats in other cars of his choice where he remained throughout the balance of his journey (R. 62). It

was also stipulated that other Negroes who were unable to be present would have testified that they moved from cars in the front part of the train to other cars toward the rear of the train where they obtained seats of their choice and remained throughout the balance of their journeys (R. 69).

That Respondent's loading practice does not constitute or result in segregation or discrimination is also clearly shown by evidence introduced in its behalf. Respondent's General Manager, Assistant General Passenger Agent, and General Superintendent of Dining Service all testified that it was the practice and policy of Respondent to treat all members of the public presenting themselves for transportation equally and that all passengers, regardless of race, creed or color, were to have free and equal use of all facilities on all trains (R. 21, 47, 51). The General Manager further testified that staff meetings were held from time to time at which officers were so instructed (R. 51).

Respondent further showed that not only were these instructions and regulations issued to the train personnel but also that they were clearly understood by the train personnel. The Conductor, Passenger Representative, Dining Car Steward, Waiter-in-Charge of the diner-lounge, Porter and Flagman all testified that they were instructed there was no policy of segregation whatever on "The City of New Orleans" and that passengers were allowed the use of any and all facilities on the train (R. 32-33, 42, 43, 44, 45, 46).

The purpose of the loading practice on "The City of New Orleans" is to safely and expeditiously load passengers in a manner which gives consideration, where possible, to passenger preference, *i.e.*, whereby passengers are loaded with others with whom they would desire to be seated as shown by past tendencies of passengers to

group together for loading and from preference expressions of the passengers. These preferences are actual and existent as shown by testimony as to observations by Respondent's witnesses (R. 19, 23) and by testimony on behalf of Miss Johnson (R. 11). Gertrude Estelle, a Negress, stated she had used other Illinois Central trains for travel for a long period of time and that it was her observation that white people and colored people on the other trains always seem to be grouped with members of their own race (R. 12) irrespective of the fact that there was no loading practice on the other trains (R. 17). All passengers are free, under company rules, to use any and all facilities on the train (R. 19, 50).

Conclusion.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

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